



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

[REDACTED]

PRELIMINARY RECITALS

Pursuant to a petition filed January 07, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Racine County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on January 28, 2014, at Kenosha, Wisconsin.

The issue for determination is whether petitioner was overpaid FS.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Kelly Kosloske

Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.
2. Petitioner received FS from November 2012–April 2013 for a household of 2.
3. Petitioner failed to report all of her earned income during the period from November 2012–April 2013.

4. On November 12, 2013 the agency issued a notice of decision to petitioner stating that she was overpaid FS from November 2012–April 2013 (claim # [REDACTED]) in the amount of \$1748 due to client error. Exhibit D.

DISCUSSION

The Department is required to recover all FS overpayments. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(c). The federal FS regulations provide that the agency shall establish a claim against an FS household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(b)(3). All adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a)(4); See also FS Handbook, §7.3.1.2, available online at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>.

Here, the agency argues that the petitioner did not report all of her income and therefore she received more FS than she was eligible for. Under FS rules, an FS household needs to report increased income only if the new income causes total gross household income to rise above 130% of the federal poverty level. FS Handbook, §6.1.1.2. At the time petitioner applied for FS, 130% of federal poverty level (FPL) for a two-person household was \$1,594. FS Handbook, §8.1.1 (release #11-04). The FPL increased effective October 1, 2012, and therefore for the overpayment period alleged, November 2012–April 2013, 130% of the FPL was \$1,640. FS Handbook, §8.1.1 (release #12-02). In September 2012, petitioner's gross household income went above the 130% FPL at \$1973 (with earnings of \$1113+child support of \$860). The FS Handbook states that she had to report in October 2012 that household income exceeded 130% of the FPL:

6.1.1.2 Change Reporting for All Other Food Units (Reduced Reporting)

All other food units [i.e., household's which do not have an EBD member] are only required to report if their total monthly gross income exceeds 130% (8.1.1) of the Federal Poverty Level (FPL) for their reported food unit size. This change must be reported by the 10th of the month following the month in which the total income exceeded 130% of the FPL.

As long as a food unit's total income is less than 130% of the FPL, a food unit need not report changes in income, assets, address changes, household composition, etc. This is known as "Reduced Reporting" requirements.

...
FSH, §6.1.1.2.

This follows Federal law which directs that States may:

“...require households with income that are assigned 6-month or longer certification periods to *report only changes in the amount of gross monthly income exceeding 130% of the monthly poverty income guideline.*” 7 C.F.R. § 273.12(a)(vii); (emphasis added.)

According to the overissuance worksheets and income verifications, the income for Petitioner's household exceeded 130% of the FPL for the time periods in question. Here, I add for petitioner's benefit that the biweekly child support income is determined, for FS purposes, by averaging the two payments and multiplying by 2.15 because some months have more than 4 weeks (an average of 4.3 weeks per month). This is a system-wide policy that the agency uses for every FS case. Thus, I find no error in the determination of that income.

Petitioner argued that she had reported the income at some point, but there is no record of this. Her testimony was that her failure to report was not intentional. I add for petitioner's information that federal

law requires *all* FS overpayments be recovered, regardless of whether the recipient or the agency is at fault, and that all adult household members are liable. Those regulations provide, in relevant part, as follows:

- (a) Establishing claims against households. All adult household members shall be jointly and severally liable for the value of any overissuance of benefits to the household. The State Agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive . . .

7 CFR § 273.18.

Based on the foregoing, I must find that the petitioner was overpaid FS, even if her failure to report was unintentional. She is reminded that if she still has or applies for FS that she may make arrangements for having her overpayment taken out of her current FS allotment per month, or make other arrangements for the repayment of the debt as described in the notice of overpayment.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

Petitioner was overpaid FS from November 2012–April 2013 (claim # [REDACTED]) in the amount of \$1748.

THEREFORE, it is

ORDERED

That the petition for review herein be dismissed.


REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

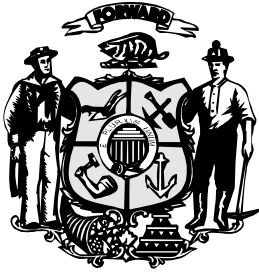

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 17th day of March, 2014

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 17, 2014.

Racine County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability